



# PUBLIC NOTICE

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## WIRELINE COMPETITION BUREAU ANNOUNCES RURAL BROADBAND EXPERIMENTS SUPPORT FOR PROVISIONALLY SELECTED BIDS READY TO BE AUTHORIZED

**Northeast Rural Services, Inc. and Lake County Minnesota Lake County d/b/a Lake Connections  
Must Submit Letters of Credit and Legal Counsel's Opinion Letters by June 17, 2016**

**WC Docket No. 10-90  
WC Docket No. 14-259**

By this Public Notice, the Wireline Competition Bureau (Bureau) announces that it is ready to authorize six winning bids for rural broadband experiment support, as modified and summarized in the Attachment to this Public Notice. Collectively, the support associated with these bids totals \$4,355,984.61. Northeast Rural Services, Inc. (NRS) will use its allotted support to bring broadband services to 120 census blocks in Oklahoma. Lake County Minnesota Lake County d/b/a Lake Connections (Lake Connections) will use its allotted support to bring broadband services to 845 census blocks in Minnesota.

We grant NRS's motion to withdraw certain census blocks for which NRS was unable to obtain eligible telecommunications carrier (ETC) designation from six of its provisionally selected bids. For five of the six bids, the withdrawal of the blocks, and the corresponding reduction in the number of associated served locations, reduces the collective award amount to \$864,704.43.<sup>1</sup> For the remaining one bid, the withdrawal of all but one of the blocks effectively withdraws the entire bid since the remaining census block has no supported locations.<sup>2</sup> Relatedly, we grant NRS's request to dismiss as moot petitions seeking waiver of the Commission's deadlines for filing proof of ETC designation for its six bids.<sup>3</sup>

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<sup>1</sup> See Motion to Withdraw Census Blocks from Rural Broadband Experiment Awards and Motion to Dismiss ETC Waiver Petitions as Moot, WC Docket Nos. 10-90 and 14-259 (filed Aug. 14, 2015), <http://apps.fcc.gov/ecfs/comment/view?id=60001097686>, as amended and corrected, <http://apps.fcc.gov/ecfs/comment/view?id=60001428841> (filed Feb. 16, 2016), <http://apps.fcc.gov/ecfs/comment/view?id=60001496277> (filed Mar. 4, 2016) (Motion to Withdraw). We direct the Universal Service Administrative Company (USAC) to de-commit all rural broadband experiment funding not associated with pending or authorized bids and return the funds to the high cost account.

<sup>2</sup> The one remaining block is an extremely high-cost block for which NRS commits to serve only one location. While recipients of rural broadband experiments support are required to serve all locations within their funded blocks, they were permitted to add to their projects locations in extremely high-cost blocks adjacent to funded blocks in order to reduce the project's calculated support per location. See *Rural Broadband Experiments Order*, 29 FCC Rcd at 8782, para. 36.

<sup>3</sup> See Emergency Request for Expedited Treatment: Petition of Northeast Rural Services, Inc. for Extension of Time and/or Waiver of ETC Designation Deadline for Rural Broadband Experiments, WC Docket Nos. 10-90 and 14-259 (filed Mar. 6, 2015), <http://apps.fcc.gov/ecfs/comment/view?id=60001025762> (for bids, Project Identification (ID)

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We grant Lake Connections' petition for waiver and extension of time to submit by March 5, 2015, proof of ETC designation in all areas covered by its provisionally selected bid.<sup>4</sup>

To be authorized to receive this support, each of these bidders must submit at least one acceptable irrevocable stand-by letter of credit (LOC) and Bankruptcy Code opinion letter from its legal counsel in accordance with the instructions provided below by the applicable deadline – **June 17, 2016 at 11:59 p.m. ET.**<sup>5</sup>

*Background.* On December 5, 2014, the Bureau announced its provisional selection of a first round of bids for rural broadband experiments support, including, among others, NRS's bids for Project ID numbers 8 and 10 (bids 8 and 10), and Lake Connections' bid for Project ID number 1 (bid 1).<sup>6</sup> On March 4, 2015, the Bureau announced its provisional selection of a second round of bids for rural broadband experiments support, including, among others, NRS's bids for Project ID numbers 2, 3, 7, and 9 (bids 2, 3, 7, and 9).<sup>7</sup> Under the post-selection review process established by the Commission in its *Rural Broadband Experiments Order*, the release of these public notices triggered the provisionally selected bidders' obligations to submit, by specified deadlines, certain information and documents necessary to the Bureau's assessment of their fitness for authorization.<sup>8</sup>

More specifically, the provisionally selected bidders identified in each of the public notices were required to provide, within 10 business days of its release, certain technical and financial information, including their most recent three consecutive years of audited financial statements, a description of the technology and system design that they will use to deliver voice and broadband service (including a network diagram certified by a professional engineer), and for entities proposing to use wireless technologies, a description of spectrum access requirements.<sup>9</sup> Within 60 days of the notice's release, these bidders were required to submit a letter from an acceptable bank committing to issue an irrevocable stand-by Letter of Credit (LOC).<sup>10</sup> And, within 90 days of the notice's release, these bidders were required to submit appropriate documentation of their designation as an ETC in all of the areas for which support will be received as well as a certification of accuracy.<sup>11</sup>

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numbers 8 and 10, requesting extension of the March 5, 2015 deadline for filing proof of ETC designation) (March Waiver Request); Petition for Waiver and request for Extension of Time to File ETC Designation of Northeast Rural Services, Inc., WC Docket Nos. 10-90 and 14-259 (June 2, 2015), <http://apps.fcc.gov/ecfs/comment/view?id=60001059814> (for bids, Project ID numbers 2, 3, 7, and 9, seeking extension of the June 2, 2015 filing deadline) (June Waiver Request).

<sup>4</sup> See Emergency Request for Expedited Treatment, Petition of Lake County Minnesota for Waiver of ETC Designation Deadline for Rural Broadband Experiments, WC Docket Nos. 10-90 and 14-259 (filed Feb. 21, 2015), <http://apps.fcc.gov/ecfs/comment/view?id=60001019092>, as amended, Chronology of Relevant Events Relating to Designation as an Eligible Telecommunications Carrier (filed Mar. 2, 2015), <http://apps.fcc.gov/ecfs/comment/view?id=60001025197> (Lake Connections Waiver Supplement).

<sup>5</sup> See *Connect America et al.*, WC Docket Nos. 10-90 and 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8788–93, paras. 54–71 (2014) (*Rural Broadband Experiments Order*).

<sup>6</sup> See *Wireline Competition Bureau Announces Entities Provisionally Selected for Rural Broadband Experiments; Sets Deadlines for Submission of Additional Information*, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 14684, 14687, Attach. A (WCB 2014) (*First Round Public Notice*).

<sup>7</sup> See *Wireline Competition Bureau Announces Additional Provisionally Selected Bidders for Rural Broadband Experiments and Sets Deadlines for Submission of Additional Information*, WC Docket Nos. 10-90 and 14-259, Public Notice, 30 FCC Rcd 2045, 2047, Attach. (WCB 2015) (*Second Round Public Notice*).

<sup>8</sup> See *Rural Broadband Experiments Order*, 29 FCC Rcd at 8786–93, paras. 51–71.

<sup>9</sup> See *id.* at 8787, paras. 52, 54.

<sup>10</sup> See *id.* at 8787–88, para. 54.

<sup>11</sup> See *id.* at 8778–79, 8788, paras. 22–23, 54.

*Technical and Financial Information.* We find that NRS and Lake Connections have timely submitted the required technical and financial information.<sup>12</sup> Based on our review of this information, we find that they have demonstrated sufficient ability to meet their commitments.

*NRS's LOC Commitment Letter.* We have previously determined that NRS timely submitted the required letter from a bank meeting the Commission's requirements committing to issue an irrevocable stand-by original LOC to NRS sufficient to cover its first-round provisionally selected bids, a finding which we affirm here with respect to bids 8 and 10.<sup>13</sup> We also previously granted NRS's request for waiver of its May 4, 2015 deadline for submitting a LOC commitment letter for its second-round provisionally selected bids, accepting as timely filed NRS's June 12, 2015 submission.<sup>14</sup> We determined that this LOC commitment letter was issued by a qualified bank and was sufficient to cover its second-round provisionally selected bids, a finding which we affirm here with respect to bids 2, 3, 7, and 9.<sup>15</sup>

*Lake Connections' LOC Commitment Letter.* We find that Lake Connections has timely submitted the required letter from a bank meeting the Commission's requirements committing to issue an irrevocable stand-by original LOC to Lake Connections sufficient to cover its provisionally selected bid.<sup>16</sup>

*NRS's ETC Designation and Motion to Withdraw.* We find that NRS has submitted documentation sufficient to show that the relevant state authority has designated NRS as an ETC in all of the census blocks included within NRS's bids, as modified in accordance with its Motion to Withdraw and as described in the Attachment.<sup>17</sup>

For the reasons discussed below, we grant NRS's motion to withdraw from further rural broadband experiment support consideration all census blocks within the service area of any "rural telephone company," thereby rendering moot its pending waiver petitions seeking extensions of the deadlines for submitting proof of ETC designation. Accordingly, we dismiss these waiver petitions. Given the unique circumstances of this case, we find it is in the public interest to permit NRS to withdraw these census blocks and to authorize the bids as modified.

NRS filed its application for ETC designation with the Oklahoma Corporation Commission (OCC) within 15 days of the release of the *First Round Public Notice*, thus demonstrating presumptive good faith in attempting to comply with the Commission's March 5<sup>th</sup> deadline.<sup>18</sup> In its application, NRS

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<sup>12</sup> See *id.* at 8787, para. 52.

<sup>13</sup> See *Wireline Competition Bureau Announces Rural Broadband Experiments Support for 15 Provisionally Selected Bids is Ready to Be Authorized and Releases Updated Frequently Asked Questions*, WC Docket Nos. 10-90 and 14-259, Public Notice, 30 FCC Rcd 5038, 5039 (WCB 2015) (after reviewing LOC Commitment Letter and proof of ETC designation, pronouncing NRS's first round provisionally selected bids, Project ID Numbers 1, 4, 6, and 12, ready to be authorized).

<sup>14</sup> See *Connect America Fund Rural Broadband Experiments*, Order, WC Docket Nos. 10-90 and 14-259, 30 FCC Rcd 10641, 10643, para. 7 (WCB 2015).

<sup>15</sup> See *Wireline Competition Bureau Announces Rural Broadband Experiments Support for Three Provisionally Selected Bids is Ready to Be Authorized*, WC Docket Nos. 10-90 and 14-259, Public Notice, 30 FCC Rcd 10647, 10648 (WCB 2015) (after reviewing LOC Commitment Letter and proof of ETC designation, pronouncing NRS's second round provisionally selected bids, Project ID Numbers 5 and 9, ready to be authorized).

<sup>16</sup> See *Rural Broadband Experiments Order*, 29 FCC Rcd at 8787, para. 54.

<sup>17</sup> See Application of Northeast Rural Services, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996, Cause No. PUD 201400359 (AT&T Proceeding), *Final Order Designating Northeast Rural Services, Inc. as an Eligible Telecommunications Carrier*, Order No. 637332 (Mar. 4, 2015), <http://imaging.occeweb.com/AP/Orders/occ5183667.pdf> (designating NRS as an ETC in specified exchanges served by Southwestern Bell Telephone Company d/b/a AT&T Oklahoma) (*NRS ETC Designation Order*).

<sup>18</sup> See *AT&T Proceeding*, Application of Northeast Rural Services, Inc. for Designation as an Eligible Telecommunications Carrier (filed Dec. 19, 2014), <http://imaging.occeweb.com/AP/CaseFiles/occ5168674.pdf>;

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requested designation in certain exchanges served by Southwestern Bell Telephone Company d/b/a AT&T Oklahoma (AT&T exchanges).<sup>19</sup> NRS explains, however, that when it filed its ETC application with the OCC, as when it submitted its bid to the Commission, reliable information showing the geographic relationship between the service areas of incumbent local exchange carriers (ILEC) and census blocks was not readily available.<sup>20</sup> Consequently, NRS engaged an engineering firm to map the requisite overlaps only to discover, upon the work's completion, that certain census blocks included within each of six provisionally selected bids were located within the service area of either Chouteau Telephone Company d/b/a FairPoint Communications Inc. (Fairpoint) or CenturyTel of Northwest Arkansas, LLC d/b/a CenturyLink.<sup>21</sup>

On January 29, 2015, NRS amended its application to include the relevant portions of these carriers' service areas.<sup>22</sup> These carriers, however, unlike AT&T, were price-cap affiliates meeting the statutory definition of "rural telephone company."<sup>23</sup> Under section 214(e)(5) of the Telecommunications Act of 1996, the service area of any newly designated ETC, if located within the service area of a rural telephone company, must conform to the entire service area of the rural telephone company, "unless and until the Commission and the States . . . establish a different definition [of the service area for both entities]."<sup>24</sup> Before the OCC, Fairpoint challenged NRS's proposed designation in only part of its service area as contrary to the public interest.<sup>25</sup>

In light of these developments, NRS explains, it soon became apparent that there was insufficient time for the OCC to fully consider the public interest ramifications of NRS's amended ETC application before expiration of the Commission's March 5<sup>th</sup> deadline for submitting proof of ETC designation.<sup>26</sup> Consequently, in mid-February, NRS trifurcated the proceeding by carrier service area.<sup>27</sup> Such

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*Rural Broadband Experiments Order*, 29 FCC Rcd at 8778, para. 22 n.52 (explaining that the Commission would presume an entity to have shown good faith in attempting to meet the 90-day deadline if it filed its ETC application within 15 days of release of the public notice announcing the winning bidders).

<sup>19</sup> See *supra* note 17.

<sup>20</sup> See June Waiver Request at 1–2; March Waiver Request at 4, para. 10.

<sup>21</sup> See *id.*

<sup>22</sup> See *id.*; see also AT&T Proceeding, Amendment to Application (filed Jan. 29, 2015), <http://imaging.occeweb.com/AP/CaseFiles/occ5176336.pdf>. NRS again amended its application on February 11th to correct an error in the study area boundary description of one of the carriers. See AT&T Proceeding, Second Amendment to Application (filed Feb. 11, 2015), <http://imaging.occeweb.com/AP/CaseFiles/occ5179181.pdf>.

<sup>23</sup> 47 U.S.C. § 153(44) (defining "Rural Telephone Company").

<sup>24</sup> *Id.* § 214(e)(5). Before granting such a designation, the OCC must make an affirmative public interest finding that includes a cream skimming analysis. *Id.* § 214(e)(2), (5); 47 CFR § 54.207(c); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371, 6392–95, paras. 48–53 (2005) (discussing the cream skimming analysis used by the Commission when an entity, seeking high-cost support pursuant to the former identical support rule, requested that the Commission designate it as an ETC below the service area level of a "rural" ILEC).

<sup>25</sup> See Application of Northeast Rural Services, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996, Cause No. PUD 201500079 (Fairpoint Proceeding), *Report of the Administrative Law Judge on a Motion to Suspend Proceeding*, at 1, para. 2 (rel. June 18, 2015), <http://www.occeweb.com/ap/ReptRecomm/IHREPT/2015/15pud79.pdf>.

<sup>26</sup> See Motion to Withdraw at 3 (noting that in past orders, the OCC's Public Utility Division has stressed that designations with rural telephone company service areas frequently require significant time to complete).

<sup>27</sup> See *id.* at 6, para. 18; see also AT&T Proceeding, Motion to Bifurcate Proceedings (filed Feb. 12, 2015), <http://imaging.occeweb.com/AP/CaseFiles/occ5179182.pdf>; AT&T Proceeding, *Order Granting Motion for Procedural Schedule and Dismissal without Prejudice* (rel. Feb. 19, 2015), <http://imaging.occeweb.com/AP/Orders/occ5180196.pdf>; see also Fairpoint Proceeding, Application of Northeast

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trifurcation allowed the OCC to separately designate NRS as an ETC within the requested AT&T exchanges by the Commission’s deadline – including within the census blocks we find ready to authorize today – while continuing to consider the newly filed, separate petitions of NRS for ETC designation in each of the two rural telephone companies’ study areas.<sup>28</sup>

For the six bids that included some census blocks in one or both of the “rural” study areas, NRS timely filed with the Bureau petitions for waiver of the associated Commission deadlines for filing proof of ETC designation.<sup>29</sup> Subsequently, NRS decided that it no longer wanted to dedicate the time or resources necessary to resolve these ETC designations.<sup>30</sup> Accordingly, on July 15, 2015, NRS filed with the OCC motions to dismiss its ETC applications, motions which the OCC ultimately granted without prejudice in September of 2015 and January of 2016.<sup>31</sup> On August 14, 2015, NRS also filed the subject Motion to Withdraw with the Commission.<sup>32</sup>

In the absence of any evidence that NRS acted with bad faith when submitting its bids or during the ETC designation process, we find that it serves the public interest to permit NRS to modify five of its six bids rather than finding NRS in default and withdrawing these bids in their entirety from further consideration for rural broadband support. We recognize the statutory framework may make it more difficult to obtain ETC designation in only part of a rural telephone company’s service area. On balance, therefore, based on the specific circumstances before us, we find good cause to grant NRS’s requested relief.

*Lake Connections’ ETC Designation.* We find that Lake Connections has submitted documentation sufficient to show that the relevant state authority has designated Lake Connections as an ETC in all of the census blocks included within Lake Connections’ bid, as described in the Attachment.<sup>33</sup>

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Rural Services, Inc. for Designation as an Eligible Telecommunications Carrier in the Study Area of Chouteau Telephone Company d/b/a FairPoint Communications (filed Feb. 20, 2015), <http://imaging.occeweb.com/AP/CaseFiles/occ5181592.pdf>; Application of Northeast Rural Services, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996, Cause No. PUD 201500081 (CenturyLink Proceeding), Application of Northeast Rural Services, Inc. for Designation as an Eligible Telecommunications Carrier in the Study Area of CenturyTel of Northwest Arkansas LLC d/b/a CenturyLink (filed Feb. 20, 2015), <http://imaging.occeweb.com/AP/CaseFiles/occ5181593.pdf>.

<sup>28</sup> See generally *NRS ETC Designation Order*. NRS’s ETC designation in the AT&T exchanges covered all of the census blocks associated with six other bid projects. After ensuring that NRS met all of its other post-selection review requirements, the Bureau authorized USAC to disburse the funding associated with each of these bids. See *Rural Broadband Experiment Support Authorized for Winning Bids Submitted by BARC Electric Cooperative, Douglas Services, Inc., and Northeast Rural Services, Inc.*, WC Docket Nos. 10-90 and 14-259, Public Notice, DA 15-1416 (WCB rel. Dec. 11, 2015) (authorizing USAC to disburse support for, inter alia, NRS’s project ID numbers 5 and 11); *Rural Broadband Experiment Support Authorized for Five Winning Bids for First Step Internet, LLC and Northeast Rural Services, Inc.*, WC Docket Nos. 10-90 and 14-259, Public Notice, 30 FCC Rcd 9886, 9888, Attach. (WCB 2015) (authorizing USAC to disburse support for, inter alia, NRS’s Project ID numbers 1, 4, 6, and 12).

<sup>29</sup> See *supra* note 3.

<sup>30</sup> See Motion to Withdraw at 6–7.

<sup>31</sup> See Fairpoint Proceeding, Motion to Dismiss Cause (filed July 15, 2015), <http://imaging.occeweb.com/AP/CaseFiles/occ5214961.pdf>, granted, *Order Granting Motion to Motion to Dismiss Cause without Prejudice* (rel. Jan. 25, 2016), <http://imaging.occeweb.com/AP/Orders/occ5258620.pdf>; CenturyLink Proceeding, Motion to Dismiss Cause (filed July 15, 2015), <http://imaging.occeweb.com/AP/CaseFiles/occ5214959.pdf>, granted, *Order Granting Motion to Motion to Dismiss Cause without Prejudice* (rel. Sept. 9, 2015), <http://imaging.occeweb.com/AP/Orders/occ5226740.pdf>;

<sup>32</sup> See *supra* note 1.

<sup>33</sup> See Petition of Lake County Minnesota dba Lake Connections for Designation as an Eligible Telecommunications Carrier, Docket No. P-6944/M-15-65 (Lake Connections Proceeding), *Order Granting Petition for ETC Designation* (Dec. 2, 2015),

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We also find good cause to grant Lake Connections' petition for waiver of its March 5, 2015 deadline for submitting this information and accordingly, accept as timely filed Lake Connections' submission.<sup>34</sup>

In its waiver request, Lake Connections describes diligent efforts to meet the Commission's March 5th deadline despite several legal ambiguities regarding the Minnesota Public Utility Commission (MPUC)'s authority over Lake Connections' proposed services. Lake Connections proposed to offer broadband connectivity and interconnected VoIP services to fulfill the Commission's service requirements for rural broadband experiments funding.<sup>35</sup> In a separate on-going proceeding before the MPUC that had begun in September of 2014, however, several cable companies argued that federal law preempted local regulation of fixed interconnected VoIP service as a local telephone service.<sup>36</sup> Lake Connection explains that such challenges to the MPUC's authority drew into question the ability of the MPUC to issue Lake Connections a binding ETC designation.

Consequently, Lake Connections took certain precautionary measures before filing its application, including independently researching and briefing the jurisdictional issues and then conferring with the Minnesota Department of Commerce (MDOC) on its findings.<sup>37</sup> Such measures, explains Lake Connections, were essential to its determination to file its ETC application with the MPUC rather than the Commission, despite the cable companies' ongoing challenges. This delayed the finalization and submission of its application until January 29, 2015.<sup>38</sup>

Lake Connections further explains that the cable companies' jurisdictional claims complicated and extended the MPUC's ensuing public interest analysis. Indeed, the MPUC did not release its order rejecting the cable companies' challenges until July 28, 2015, the day after it issued an order conditionally approving Lake Connections' ETC designation application, approximately four months after Lake Connections' submission of its ETC application, and approximately five months after the Commission's March 5<sup>th</sup> deadline.<sup>39</sup> In the interim, the MDOC, the Minnesota Telecom Alliance (MTA), and Citizens

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<http://apps.fcc.gov/ecfs/document/view;NEWECFSSSESSION=Sgg1W6lVprs22CwNxLvnRJySxvh17vYpHPrhT8LJq222GOyz8xgc!-22619469!1749169674?id=60001424569>.

<sup>34</sup> See *supra* note 4; *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (explaining that the Commission may waive its policies or rules upon a showing of good cause and may take into account, on an individual basis, considerations of hardship, equity, or more effective implementation of overall policy); *NE Cellular Tele. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (same) (*NE Cellular*); *Network IP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008) (waiver of the Commission's policies or rules is appropriate only if both: (i) special circumstances warrant a deviation from the general rule; and (ii) such deviation will serve the public interest) (citing *NE Cellular*, 897 F.2d at 1166); see also *Rural Broadband Experiments Order*, 29 FCC Rcd at 8788 n.95 (delegating authority to the Bureau to act on petitions for waiver of ETC designation deadlines).

<sup>35</sup> See *2011 Connect America Report and Order*, 26 FCC Rcd at 17691-94, paras. 74-89 (2011) (requiring recipients of Connect America funding to offer voice and broadband services); 47 CFR § 54.101 (defining supported services for rural, insular and high-cost areas).

<sup>36</sup> See Lake Connections Waiver Supplement at 1; see also *infra* note 48.

<sup>37</sup> See Lake Connections Waiver Supplement at 1.

<sup>38</sup> Lake Connections Proceeding, Comments of Citizens Telecommunications Company of Minnesota, LLC, Docket M-15-65 (filed Jan. 29, 2015, as amended, Jan. 30, 2015), <https://minnesotapuc.legistar.com/View.ashx?M=F&ID=3758020&GUID=8DE0032C-C807-4FE5-A3D0-D83AFB15E92F> (Lake Connections ETC application). The January 29th filing was amended on January 30th to include an inadvertently omitted signature page.

<sup>39</sup> See *Complaint by the Minnesota Department of Commerce (DOC) against the Charter Affiliates regarding Transfer of Customers*, Docket No. P6716, 5615/C-14-383, Order Finding Jurisdiction and Requiring Compliance Filing (rel. July 28, 2015), <https://minnesotapuc.legistar.com/View.ashx?M=F&ID=4010051&GUID=58D1C9DF-1AE1-41A2-AE90-9DC09AF4E037> (determining fixed, interconnected VoIP service to be a telecommunications service and requiring providers' compliance with all Minnesota's statutes and rules applicable to the provision of

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Telecommunications Company of Minnesota, LLC, the Frontier Communications operating company that serves much of the area for which Lake Connections was seeking ETC designation (Frontier), all initially questioned whether Lake Connections was eligible for ETC designation.<sup>40</sup> Moreover, in its July 27, 2015 order, the MPUC conditioned Lake Connections' ETC designation on the submission of a compliance plan detailing the contractual allocation of responsibilities necessary to ensure that Lake County would remain legally and financially responsible for meeting ETC-related obligations.<sup>41</sup> Such intermediate step further delayed Lake Connections' final designation until December 2, 2015.<sup>42</sup>

Based on the record, we find that Lake Connections acted diligently in attempting to comply with ETC filing obligations and related Commission deadlines. Moreover, Lake Connections' inability to resolve the pending ETC designation by its March 5th deadline had no potential impact on the offer of Phase II model-based support.<sup>43</sup> Accordingly, we find that under the foregoing circumstances, on balance, it best serves the public interest to grant Lake Connections a waiver of its March 5<sup>th</sup> deadline for filing proof of ETC designation.

*LOC and Opinion Letter Requirement.* No later than 10 business days after the release of this Public Notice, NRS and Lake Connections must separately submit at least one irrevocable stand-by signed LOC, issued in substantially the same form as set forth in the model LOC provided in Appendix A of the *Rural Broadband Experiments Order*, by a bank that is acceptable to the Commission.<sup>44</sup> The Bureau previously released information that provisionally selected bidders may find helpful in obtaining their LOCs.<sup>45</sup> At a minimum, the LOC(s) must be equal to the amount of the first disbursement of support.<sup>46</sup> The *Rural Broadband Experiments Order* lists specific requirements for a bank to be acceptable to the Commission to issue the LOC.<sup>47</sup> Those requirements vary for U.S. banks and non-U.S. banks.

In addition, a provisionally selected bidder is required to provide with its LOC(s) at least one opinion letter from legal counsel clearly stating, subject only to customary assumptions, limitations and qualifications, that, in a proceeding under the Bankruptcy Code, the bankruptcy court would not treat,

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local telephone service); *appeal pending*, Complaint for Declaratory and Preliminary and Permanent Injunctive Relief, Charter Advanced Svcs (MN), LLC and Charter Advanced Svcs VIII (MN), *LLC vs. Beverly Jones Heydinger*, CASE 0:15-cv-03935-SRN-HB (filed Oct. 26, 2015), <https://prodnet.www.neca.org/publicationsdocs/wwwpdf/102915charter.pdf>.

<sup>40</sup> See Lake Connections Proceeding, Comments of the Minnesota Department of Commerce (filed Mar. 16, 2015), <https://minnesotapuc.legistar.com/View.ashx?M=F&ID=3758023&GUID=3930D5FA-8864-4E8B-BADC-45946D3435A3>; Lake Connections Proceeding, Comments of the Minnesota Telecom Alliance (filed Mar. 16, 2015), <https://minnesotapuc.legistar.com/View.ashx?M=F&ID=3758024&GUID=955115AA-154B-4794-BE0E-DE3713F82F68> (MTA Comments); Lake Connections Proceeding, Challenge to the Form or Completeness of Petition (filed Feb. 6, 2015), <https://minnesotapuc.legistar.com/View.ashx?M=F&ID=3758021&GUID=FF6462D4-18F1-465E-A91D-449BC280BDAD> (Frontier Challenge).

<sup>41</sup> See Lake Connections Proceeding, *Order Granting Petition Subject to Conditions, and Requiring Compliance Filing* at 6 (July 27, 2015), <https://minnesotapuc.legistar.com/View.ashx?M=F&ID=4101692&GUID=E9B8F32B-A96C-4CB0-A9AF-DAB777C4EA46> (citing *Tech. Transitions Order*, 29 FCC Rcd at 1475–76, para. 122) (*Conditional Order*). The compliance filing was due within 30 days of the release of the order. See *id.* at 9.

<sup>42</sup> See *supra* note 33.

<sup>43</sup> See *Model-Based Support Offer PN*, 30 FCC Rcd 3905.

<sup>44</sup> *Rural Broadband Experiments Order*, 29 FCC Rcd at 8788, 8805, para. 54, Append. A.

<sup>45</sup> See *Wireline Competition Bureau Reminds Provisionally Selected Rural Broadband Experiments Bidders of Letter of Credit Requirements*, WC Docket Nos. 10-90 and 14-259, Public Notice, 29 FCC Rcd 333 (WCB 2015).

<sup>46</sup> *Id.* at 8791, para. 62.

<sup>47</sup> *Id.* at 8790, para. 59.

under section 541 of the Bankruptcy Code, the LOC or proceeds of the LOC as property of the provisionally selected bidder's bankruptcy estate, or the bankruptcy estate of any other rural broadband experiments recipient-related entity requesting issuance of the LOC.<sup>48</sup> The opinion letter(s) must not be dated at an earlier date than the issue date of the LOC(s) and should reference the specific LOC(s).

If, after reviewing each of the bidders' LOC(s) and opinion letter(s), the Bureau determines that the bidder has met all requirements, it will authorize the support described in the Attachment.<sup>49</sup>

*Instructions for Submission of Letter of Credit and Opinion Letter.* The bidders must submit at least one LOC and one opinion letter for the provisionally selected bids identified in the Attachments. The LOC(s) and opinion letter(s) must reference the relevant study area code as listed in Attachment.

The original of the LOC(s) and opinion letter(s) must be submitted to the Universal Service Administrative Company by the applicable deadline – **June 17, 2016 at 11:59 p.m. ET**, at the following address: Rural Broadband Experiments LOC, USAC, 2000 L Street NW, Suite 200, Washington, DC 20036. We recommend that the original of the LOC(s) and the opinion letter(s) be sent by means of delivery requiring signature. These documents may be sent to the attention of Kristen Farole.

A copy of the LOC(s) and opinion letter(s) must also be uploaded to the FCC Form 5620 by the applicable deadline in two attachments. The LOC(s) attachment should be designated as "Letter of Credit" and the opinion letter(s) attachment should be designated as "Opinion Letter." Provisionally selected bidders do not need to upload interim drafts of the LOC(s) and opinion letter(s) to FCC Form 5620 after they have upload their initial LOC(s) and opinion letter(s) by the deadline, but they should submit the final version of their LOC(s) and opinion letter(s) to FCC Form 5620 after they have received approval.

The failure to meet this deadline will result in removal from continuing eligibility for rural broadband experiments support.

For further information, please contact Nissa Laughner, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7400 or at TTY (202) 418-0484.

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<sup>48</sup> *Id.* at 8789, para. 58.

<sup>49</sup> *Id.* at 8788, para. 54.

**Attachment**

**Ready to Authorize Provisionally Selected Bidders and Bids**

Category One<sup>1</sup>

<b>Bidder Name</b>	<b>State</b>	<b>Selected Bid Project ID Number</b>	<b>Selected Bid Amount, as Adjusted</b>	<b>Census Blocks Covered by Selected Bid</b>	<b>Study Area Code</b>
Northeast Rural Services, Inc. <sup>2</sup>					
	OK	2	\$10,751.97	2	436144
	OK	3	\$71,573.03	4	436145
	OK	7	\$196,413.90	47	436146
	OK	9	\$540,293.14	59	436147
	OK	10	\$45,672.39	8	436148
Lake County d/b/a Lake Connections <sup>3</sup>					
	MN	1	\$3,491,280.18	845	366110

<sup>1</sup> Recipients authorized to receive support for category-one projects must deploy a network capable of delivering 100 Mbps downstream/25 Mbps upstream and offer at least one service plan that provides 25 Mbps downstream/5 Mbps upstream to all eligible locations. For that service plan, recipients must provide usage that is reasonably comparable to usage available for comparable wireline offerings in urban areas, at a price that meets the Commission’s reasonable comparability benchmarks, and latency no greater than 100 milliseconds.

<sup>2</sup> All of NRS’s listed bids have been adjusted in accordance with NRS’s Motion to Withdraw. We note that one of the blocks removed from bid 2 and two blocks removed from bid 9 pursuant to NRS’s Motion to Withdraw were also deemed already served by an unsubsidized competitor through the Phase II challenge process and thus subject to removal on this basis as well. *See Connect America Fund, Connect America Phase II Challenge Process, WC Docket Nos. 10-90 and 14-93, Order, 30 FCC Rcd 2718 (WCB 2015).* Moreover, for bids 7 and 9, the bid amount and census block count were further adjusted to account for the removal of additional census blocks not included in NRS’s Motion to Withdraw but deemed already served through the Phase II challenge process. Specifically, for bid Project ID No. 7, an additional six census blocks were removed, and for bid Project ID No. 9, one additional block was removed. *See id.*

<sup>3</sup> The award amount and census block count were reduced to account for the removal of two census blocks deemed already served through the Phase II challenge process. *See Connect America Fund, Connect America Phase II Challenge Process, WC Docket Nos. 10-90 and 14-93, Order, 30 FCC Rcd 2718 (WCB 2015).*